



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates	Application 06-10-026 (Filed October 23, 2006)
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)
Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan	Application 07-03-019 (Filed March 19, 2007)

**OPENING BRIEF OF THE
CONSUMER FEDERATION OF CALIFORNIA**

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I. INTRODUCTION

The Commission initiated this investigation (I-07-01-022) on January 16, 2007, as a “companion” proceeding to applications filed by California Water Service Company (A.06-10-026), Park Water Company (A.06-11-009) and Suburban Water Systems (A.06-11-010) to establish water conservation rates.¹ The Commission intended to hear conservation rate proposals “other than those set forth in the individual applications,” and to “study and address overarching conservation policy issues raised by the filed applications, including increasing block rate design, WRAM design, [and] conservation memorandum accounts.”² The investigation is timely.

According to the California State Water Plan, updated in 2005, California’s population is growing by about 600,000 people per year, and in the next 25 years is projected to grow from 36.5 million to 48 million.³ Based on current trends, the Department of Water Resources estimates an additional, annual 3.5 million acre-feet of demand for water, which must be offset by a combination of management strategies to reduce demand, improve system efficiency and redistribute and augment supplies.⁴ California’s investor owned water utilities must contribute to the state’s effort to manage water supplies by developing effective water conservation strategies, including water conservation rates.

The Consumer Federation of California (“CFC”) filed comments and testimony in this proceeding to discuss policy issues inherent in the design of conservation rates. CFC identified various policy judgments incorporated in the parties’ settlement

¹ “Order Instituting Investigation to Consider Policies to Achieve the Commission’s Conservation Objectives for Class A Water Utilities” (“OI”), mailed January 16, 2007.

² *Id.* at 3.

³ Water Plan Update 2005 at Vol. 1, p. 3.4.

⁴ Water Plan Update 2005 at Vol. 1, p. 4.18

proposals and discussed alternatives, so that the Commission may determine what constitutes a reasonable conservation rate design. (Tr. 468-70). CFC asks the Commission to take the following actions:

- Direct each utility to immediately begin gathering data needed to design conservation rates for commercial and industrial customers, including historical usage information for each customer.
- Direct each utility to develop a careful analysis of forward-looking costs of supplying water to its customer base so that in its next GRC, prices assigned to the second and third tiers of increasing block rates can be calibrated with costs.
- Postpone implementation of conservation rates until after:
 - Each water utility develops a cost allocation study, reviewed in a general rate case, to ensure all customer classes are treated equitably when conservation rates are placed in effect.
 - Each water utility develops conservation rates for all customer classes with the potential to reduce usage
 - Each water utility develops cost information which appropriately align increasing block rates with the utility's costs.
- Require that the first tier of any increasing block rate, or budget rate, be set at a level which allows residential customers an adequate supply of water for their essential, indoor water needs. Since all parties appear to agree in this case that that level is 10 Ccf, use 10 Ccf as the break point for the first tier rate, but allow individual customers to show a greater allowance is necessary because of the number of customers at a particular meter connection.

- Direct each utility to develop a study of customer usage patterns so that contributions of customer classes to peak demand in the summer can be identified and seasonal rates established.
- If the Commission determines that it is necessary to immediately implement increasing block rates, it should consider authorizing different approaches to conservation rates, and measuring their effectiveness, by:
 - Allowing Cal Water to implement the increasing block rates it originally proposed (which are the same as settlement rates), as adjusted to reflect the agreement with TURN, but only in the eight districts where the Commission ordered that increasing block rates be implemented.
 - Allowing Park Water to implement the increasing block rates it originally proposed, instead of settlement rates.
 - Allowing Suburban to implement the increasing block rates it originally proposed, but differentiated between meter sizes and with multi-family dwellings removed from the residential class and treated as commercial customers.
 - Notifying only those customers whose monthly bills are likely to increase under the increasing block rates of the reasons for implementation of conservation rates and what they can do to reduce their water use.
 - Tracking the efficacy of the increasing block rates with bill frequency data demonstrating customer usage patterns, and with separate records maintained for each customer class, with multiple occupancy dwellings classified as commercial, to be reviewed in each utility's next GRC.

- Allow a utility to implement a 'Monterey-style' WRAM if a utility demonstrates that it has an incentive to promote water sales.

II. HISTORY OF THE PROCEEDING

Each of the three water utilities whose rates are under examination were ordered, in a prior Commission proceeding, to file a plan for water conservation rates. California Water Service Company (Cal Water) responded by proposing rates designed according to a formula it developed with DRA. Park Water Company ("Park") used the American Water Works Manual M1 to design rates. Suburban hired a consultant to help it design conservation rates. The original rate design proposals of the water utilities are illustrative of various approaches to the design of increasing block rates.

A. California Water Service Company (A.06-10-026).

California Water Service Company (CalWater) serves approximately 430,000 customers in 24 districts throughout the state. Under the Commission's Rate Case Plan (RCP) for Class A Water Utilities, CalWater files general rate case (GRC) applications on a three-year cycle for eight districts each year. In A.05-08-006, Cal Water filed a general rate case for the Antelope Valley, Bear Gulch, Dominguez-South Bay, Hermosa-Redondo, Kern River Valley, Marysville, Palos Verdes, and Redwood Valley districts. Cal Water asked the Commission to approve, in that proceeding, a Water Rate Adjustment Mechanism which the Commission stated "would virtually guarantee that the utility would always receive the GRC-estimated sales revenues for the districts to which the WRAM would apply;" Cal Water did not, however, propose an ascending block rate structure to accompany its WRAM proposal. D.06-08-011 at 14, 16. DRA asserted that Cal Water's application for a WRAM "was not about facilitating

conservation, but rather about moving toward a guaranteed recovery of revenues, and hence guaranteed earnings.” *Id.* at 16.

On March 9, 2006, DRA and Cal Water filed a settlement addressing the WRAM issue and proposing to develop rate design criteria for implementing increasing block rates by district. The settlement contained an agreement by the parties that “increasing block rates should be implemented in the first test year for all districts and all customer classes not covered by a Ratepayer Support Fund.” *Id.* at 17. (Tr. 498-99). The Commission rejected the settlement because the proceeding would be unduly delayed if a final decision was not issued until after the parties had reached a consensus on how rates should be designed, and because other parties would be denied an opportunity to review, and if they disapprove, to object to, the stipulation once its full extent is revealed” *Id.* at 18, 20. The Commission ordered Cal Water to file within 60 days a new application that addressed the goals of the Water Action Plan by proposing an increasing block rate design for each of the districts in this general rate case for years 2007/2008 and 2008/2009, and an accompanying mechanism to decouple sales from revenues. *Id.* at 20, *emphasis added*.

Instead of returning to the Commission with a plan for implementing increasing block rates for all customer classes in the eight districts covered by A.05-08-006, Cal Water filed an application (A.06-10-026) to implement increasing block rates in 22 districts, and only for the residential class. (Tr. 386). Apparently Cal Water has no plans to implement increasing block rates for commercial and industrial (“C&I”) customers. According to the Motion filed with the settlement in this case, “developing increasing block rates for such customers is not currently feasible in most Districts”

because it would “require reclassification of these customers based on customer and consumption data that is not available at this time.” (Tr. 387). And Cal Water has no plans to make it feasible to design conservation rates for C&I customers, since it has undertaken no effort to begin gathering the data it needs to design C&I increasing block rates. (Tr. 388). That leaves 20 to 30 percent of its customers, with higher usage, without conservation rates for some time to come. (Tr. 393).⁵

Further, Cal Water has threatened that it will not put increasing block rates into effect if the Commission does not approve its WRAM request. (Ex. 17 at pp. 7:10, 34:4; Tr. 430). “It’s a package deal,” according to Mr. Morse, “the settlement WRAM, MCBA, and increasing quantity rates all together.” (Tr. 430).

B. Park Water Company (A.06-11-009)

Park Water Company (“Park”) provides public utility water service to an estimated 27,310 customers in three separate service areas located in the Central Basin of Los Angeles County. In January 2006, Park applied to increase rates charged for water service for test year 2007, with escalation years 2008 and 2009. (A.06-01-004). Park withdrew a proposal for a WRAM, filed with its testimony, as part of a settlement agreement with DRA. (D.06-08-015 at 10). DRA opposed the WRAM in that case because Park had not demonstrated how its conservation programs will affect its revenues. *Id.* The parties agreed in the settlement that Park would file an application for a WRAM before January 1, 2007, to “de-coupl[e] water utility sales from earnings in order to eliminate current disincentives associated with conservation.” *Id.* The

⁵ Cal Water quibbles that reducing the amount of C&I customers’ service charge so that more of its costs are collected through a volumetric rate creates an incentive to conserve. The fact is, however, that a single rate does not provide a price signal at various usage points to warn customers they are exceeding normal levels of consumption, a fact Mr. Morse recognized. (Tr. 395).

Commission wanted that date moved up, and therefore “direct[ed] Park to file its WRAM application within 90 days,” or by November 22, 2006. *Id.*

Park filed an application for a WRAM in November 2006, along with a proposal to implement increasing block rates, for residential customers only. (A.06-11-009). Like Cal Water, Park has not really looked at developing increasing block rates for C&I customers. (Tr. 170, 183).⁶ Although Park Water recognizes that “there is some potential for conservation among the commercial and industrial customers” (Tr. 182), “Park believes that additional study is required” and it will be “some time” before Park will offer increasing block rates to C&I customers. (Ex. 9 at p. 12; Tr. 177). Park assumes the usage of C&I customers is very diverse, based on the size of meters used to provide service to them. (Tr. 170). It is not clear whether it is the assumed diversity of the C&I class, or a fear about the impact of increasing block rates on its revenue (Tr. 177), that is delaying Park’s offering of conservation rates to C&I customers. The average water usage of residential customers is significantly lower than that of the other customer classes.” (Ex. 9, at p. 11).

Rates proposed in Park’s application were designed using a methodology described in American Water Works Manual M1, and relied on a tabulation of customer bills for a historical period to identify typical customer class usage patterns. (Ex. 9, p. 13; Ex. 11). Park proposed a three tier block rate structure with breaks at 10 Ccf and 38 Ccf. (Ex. 9, p. 14).

Park’s proposal sets the first block rate at the approximate winter consumption levels. The winter consumption level is assumed to serve as a proxy for average indoor use (Cooking, laundry, bathing etc.) and therefore represents the low to average level of consumption. ...

⁶ Multi-family dwellings are classified as commercial customers. (Tr. 207).

Park decided to add a third rate block to target high water usage that is more than double the average summer demand of 17.5 Ccf per month.

(Ex. 9, pp. 16, 14). Park also proposed a 20% differential between block 1 and block 2, and between block 2 and block 3. (Ex. 9, p. 14; Tr. 187). Park's witness, Mr. Jackson, testified that "[t]he 20% price differential between blocks is a policy decision recommended by Park. The price differential can be adjusted as needed in future rate proceedings to send the appropriate price signal to customers." (Ex. 9, p. 14; Tr. 186-87)

C. Suburban Water Systems (A.06-11-010)

Suburban Water Systems ("Suburban") serves approximately 74,000 metered customers in its San Jose Hills and Whitter/La Mirada districts. Suburban filed an application to increase rates in August 2005, several months prior to the Commission's issuance of its Water Action Plan. (A.05-08-034) Suburban and DRA entered into a settlement agreement which was adopted by the Commission. The Settlement included a requirement that Suburban file a low-income program within 90 days after issuance of the Commission's final decision, to be considered in a separate proceeding. *Id.* at 12, App. A, ¶ 11 at p. 32..

An intervenor asked the Commission to delay implementation of rate increases until after Suburban completed a rate study and developed an increasing block rate structure for residential, industrial and commercial ratepayers. D.06-08-017 at 7. Suburban offered to implement increasing block rates in its next GRC, instead. *Id.* The Commission expressed concern about the delay in "consideration of efficiency rate designs such as increasing block rates." D.06-08-017 at 8. The Commission directed

Suburban to file a conservation rate design proposal, limited to residential customers, with its low-income program application, and a conservation rate design for all other customer classes in its next GRC. *Id.* The Commission also directed that Suburban “use a Water Revenue Adjustment Mechanism (WRAM), consistent with the WRAM adopted for Cal-Am in D.96-12-005, to track revenue changes associated with the adoption of its increasing block rate proposal.” D.06-08-017 at 8.

On or about November 23, 2006, Suburban filed an “Application ... for Authorization to Implement a Low Income Assistance Program, and Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.” The rates proposed by Suburban were designed with the help of a consulting firm. (Ex. 1). Suburban proposed a 3-tier increasing block rate design, with breaks at 10 Ccf per month and 30 Ccf per month. The 10 ccf break point for the first tier was chosen as an “estimate of a level of essential need of water.” (Tr. at 57). The consultant recommended that customers with average use should fall in the middle of the second tier. (Ex. 1, p. 3).

With a balanced rate structure of tiered rates, large usage customers should receive a larger price signal to conserve than small usage customers, and customers consuming in the middle of the rate structure on average should see no change in annual water cost. This should be accomplished by setting the switch points so that customers with average usage, approximately 20 ccf per month, should fall in the middle of the second tier and see no change in their water rates.

(Ex. 1, pp. 3-4). Both Suburban and DRA agreed with this principle, ‘in general,’ but as Mr. Kelly stated, “That’s not exactly the approach we ultimately took.” (Tr. 49).

III. THE SETTLEMENT RATES

The rates for residential customers in the CalWater-DRA settlement are the same rates under development in A.05-08-006, and filed with A.06-10-026, with an expanded bill impact analysis. (Tr. 416-17). The Suburban and Park Water settlements use the same formulaic approach as the Cal Water Settlement. (Tr. 51, 506).

A. Service Charges

In order to conform with the California Urban Water Conservation Council's (CUWCC) revised Best Management Practice (BMP) 11, which suggests that at least 70 percent of water sales revenue be collected from volumetric rates, parties to the Cal Water and Park settlements have agreed to shift collection of some costs of providing service from the service charge to volumetric rates for all classes of customers. (Motion to Approve Park Water-DRA Settlement at 6; Ex. 19, Ex. K).

The Park Water settlement reduces existing service charges by approximately 18 percent, so that 75 percent of revenue comes from the quantity charge. (Park Water Settlement at Section 4.1). Mr. Jackson stated, however, that the reduction in service charges will not change in any material way the bills that people who are at the average will receive. (Tr. 197). The appellation 'conservation rate' does not appear to fit, under these circumstances. In the Cal Water settlement, DRA and Cal Water agreed to a TURN proposal to further reduce, in seven districts, the service charge for residential customers with the smallest meters (5/8" x 3/4"), to about \$10, and all other residential service charges by a similar percent.⁷

⁷ The seven districts (and the associated small meter service charge and percent decrease in service charges) are Bakersfield (\$12.47 & 20%), Bear Gulch (\$9.97 & 23-25%), East L.A. (\$10.01 & 17%), Los Altos(\$10.05 & 4%), Palos Verdes (\$9.98 & 5%), Salinas (\$9.96 & 10%) and Stockton (\$10.03 & 3%). (June 15 Amended Settlement at ¶ IV.2.a., Attachment 1)

DRA and Suburban “chose not to change the service charge authorized in D.06-08-017 because of concerns about the impact on low-income customers,” living in multi-family dwellings. (Motion to Approve Suburban-DRA Settlement at 6). Mr. Kelley testified that Suburban’s proportion of revenue recovered through quantity rates approximates the 70% level” in BMP 11, but offered no evidence to support that claim. Ex. 3, at p. 11:4; Settlement at ¶ 4.2) Mr. Kelly suggested another reason for Suburban’s failure to reduce service charges:

[U]tilities are capital intensive, and Suburban is no different, has tremendous cash needs for debt service. And in this industry even salaries and wages are pretty much fixed. And there was a concern about variability of water use if you have sufficient amount of quantity charge, about whether or not cash flow could become an issue, and that was certainly something that was discussed.

(Tr. 69)

B. Increasing Block Rates

The first step in developing conservation rates was to gather data about customer consumption. Park and Suburban performed a detailed analysis of residential water bills in 2005. (Ex. 1, at p. 4; Ex. 9, at p. 13). Cal Water also gathered monthly billing data for every customer on the Cal Water system. (Tr. 505). This data is available for use in designing rates, with appropriate software. (Ex. 3, at p. 4:4)

Each of the settlements proposes implementation of increasing block rates only for residential customers.

1. The DRA-Cal Water-TURN Settlement.

Before beginning their data analysis, DRA and Cal Water “discussed what criteria, what parameters, as we refer to them, we would use to agree upon break points.” (Tr. 401).

[W]e wanted to write a criterion for rate design that we could -- that somebody could read the criteria and then implement the rate design. So that was the premise that we started with in designing the criteria. We did find for various reasons that occasionally we had to deviate from the criteria.

(Tr. 409). When developing settlement rates, DRA “kept the break point and, to the extent possible, the percent differences,” proposed by Cal Water. (Tr. 412).

Tier 1 was agreed to be set at the midpoint between median and average consumption in December, January and February, the lowest consumption months. (Tr. 407-09). The first tier rate is set at average winter consumption as a “proxy for indoor water use” which would “cover basic needs.” (Tr. 405-06; Ex. 17, at p. 35:11). “This is a macro approach based upon average consumption” and is not based on “an analysis of, by household, what uses of water are. It’s not an end-use thing.” (Tr. 406).

The second tier is simply the middle tier, any usage that fell between what the parties determined was an appropriate first tier and a third tier, when one was considered necessary. The settling parties determined that a third tier should be created only in districts where “the average summer use is more than twice the average winter use.” (Cal Water Amended Settlement at ¶ IV.4.b) In these districts, a break between the second and third tier was created at the midpoint between the weather adjusted average monthly annual consumption and the weather adjusted average monthly summer consumption. (Ex. 17, at p. 35). “Summer consumption” is consumption in July, August and September, the three months that had the highest consumption pattern. (Tr. 409) On the advice of unidentified Cal Water “experts”, annual and summer consumption figures were then adjusted to reflect weather

adjustment information the company uses for other filings with the Public Utilities Commission. (Tr. 410) Mr. Morse did not examine this adjustment in detail. (Tr. 410).⁸

Rigidly applying a formula to design rate blocks, as the settlement parties have done, does not necessarily make sense. Take the case of South San Francisco. The settlement proposes a two tier rate structure for South San Francisco, with the top of the first tier set at 5 Ccf and all usage above that charged at a higher rate. (Cal Water Settlement, Attachment 2, p. 165). When asked if it made sense to set the top of the first tier below what even Cal Water recognizes as the level need for essential indoor uses (Tr. 348-49), Mr. Morse responded:

What I'm looking for speaks for itself. What we looked at is statistics on actual consumption, and we looked at what the winter mode consumption was, and that's what it's based on. I can't tell you exactly why customers in South San Francisco have a winter mode of 5 Ccf, ...

(Tr. 378).

The parties followed seven steps to price the rate blocks. (Tr. 411). They are described in Mr. Morse's direct written testimony (Ex. 17, at p. 36) and the first Cal Water settlement (Section IV.3.c. at p. 4).⁹ The second tier price is set at the current single quantity rate, the third tier at 20% above the second tier, and the first tier at 95% below the second tier price. If necessary, the second and first tier prices are adjusted to produce the amount of revenue authorized in the company's last general rate case. (Ex. 17, at p. 36).

⁸ The actual numbers used as break points for each district are not part of the record. (Ex. 20; Tr.).

⁹ Settlement Agreement between the Division of Ratepayer Advocates and California Water Service Company on WRAM & Conservation Rate Design Issues" filed April 23, 2007. It appears the same method was used to price the tiers in the Amended Settlement, though it is not as clearly spelled out. (Section IV.4.c, at p. 5, "Corrected")

The 20 percent differential between rate blocks to which the parties agreed, may not be great enough to encourage customers to conserve. As Mr. Morse pointed out, “The rate design is a 20-percent increase at the third tier. There are general rate cases that have larger than 20-percent increases. “ (Tr. 428).

One reason that the parties agreed to limit the amount of the increase from the second tier to the third tier to 20% was because of the possibility that the Commission would approve a general rate increase in some Cal Water districts, during the period that rates were in effect. (Tr. 513) “DRA was particularly concerned, for example, with the percent difference between tiers and how significant that we could make it given that, for some of the 24 districts in Cal Water's service area, the RCP adopted during the settlement negotiations gave us the possibility of significant changes in cost of service [sic].” (Tr. 513). Under this rationale, it will never be a good time to implement conservation rates, so long as Cal Water continues to file applications to increase rates.

If impending authorization of significant increases is considered an impediment to the design of reasonable conservation rates, it makes more sense to delay implementation of Cal Water's conservation rates until the magnitude of the rate increase is known. Customers in the first tier may be justifiably confused by the implementation of rates that reduce the price by 5 percent, then significantly raise the price a few months later. Further, we won't know until rate case decisions are issued how large an increase will be approved and what differential in rate blocks will induce rate shock in customers. Perhaps the Commission took this fact into consideration when it directed Cal Water to limit its increasing block rate design to the eight districts”*in this general rate case.*” D.06-08-011 at 20.

2. The Park Water Company-DRA Settlement

The Park Water-DRA Settlement proposes a two-block rate design. The parties have agreed to set the first tier maximum usage figure at 10 ccf, the midpoint between the median and the average winter consumption, as a proxy for indoor water use. (Park Water Settlement at ¶ 4.3(a); Ex. 10, at p. 7). Block 2 includes all usage beyond the top of Block 1. (*Id.* at ¶ 4.3(b)). A third block was not deemed unnecessary “because the difference between summer and winter usage is not significant enough to make a third block necessary or meaningful.” *Id.* at ¶ 4.3(c)).

There is some confusion about the numbers used to develop rate blocks. Mr. Jackson testified that average winter usage is 10.5 Ccf; average monthly usage is 13.3 Ccf; and average summer demand is about 14.5 Ccf (Ex. 9, at p. 14; Tr. 183-85). The settlement shows the summer average consumption is 20 ccf (41 to 50 ccf bi-monthly). (Settlement Attachments, p. 30) Mr. Jackson thought this figure might not be accurate. (Tr. 186).

Rather than using the 20 percent differential between rate blocks deemed appropriate by Cal Water and Suburban, and by Park Water itself (Tr. 186-87), DRA and Park Water decided to set a differential price of 10% between rate blocks in the settlement, as a matter of “judgment”. (Settlement at ¶ 4.4; Tr. 186). Block 1 prices will be “reduced to be approximately 96.5% of what the single quantity rate would be under a single tier standard rate design with the same reduced service charges,” and “[t]he volumetric rate for Block 2 is approximately 10.4% greater than the first tier rate. (*Id.*)¹⁰ Thus, only 35 percent of Park’s residential customers will see an increase in rates for

¹⁰ These figures are somewhat at odds with the last page (p.30) of the Attachment to the Settlement which shows both first and second tiers are being increased.

usage above 10 ccf, and the increase will be slight, whereas 65 percent of Park's residential customers will see reduced charges after the increasing block rates are implemented. (Tr. 188). Rather than sending a message that it is time to conserve, the settlement rates may encourage customers to use more water.

3. The Suburban Water-DRA Settlement

The Suburban-DRA settlement proposes a two block rate structure, with the top of the first tier set at 20 Ccf. This break point is unreasonable.

First, the numbers used as the basis for the break point are unreliable. The usage figures in Zone 3 of the Whittier/La Mirada District were inexplicably low. (Suburban Settlement, Attachment 2). When asked to explain this anomaly, DRA's witness responded "There is only a certain amount of whys that we can answer." (Tr. 17) "We're not doing a perfect design," DRA said, "[b]ut for simplicity's sake, we've made some averages between the two service areas." (Tr. 25-26). DRA and Suburban also appeared to disagree as to how the data base used to develop rates was adjusted, and how averages were derived. (Tr. 21-22).

Second, the parties deviated from the general principle that winter usage should be used as a proxy for indoor use, as was done for both Cal Water and Park Water. The Parties to the Suburban settlement "set the upper level of Block I at the mid point between average monthly (annual) consumption and average summer consumption." (Suburban-DRA Settlement at ¶ 4.3).

The reason given in the settlement for the party's deviation from DRA's generally accepted parameter was to accommodate the needs of low-income customers living in multi-family residences. (Suburban Settlement at ¶ 7.2). It is not clear why, in the

Suburban settlement, low-income customers were included among residential customers whose bills would be calculated on tiered rates. In the Cal Water settlement, multi-family residences were not included in the residential database used for increasing block rates. (Tr. 393). If Suburban's multi-family buildings had been treated like commercial customers, as in the Cal Water settlement, there would have been no need to change the first tier proposed by Suburban in its initial application, or to ignore DRA's parameters.

Moreover, the parties have not shown that adjustment of the first tier boundary was necessary to address the needs of low-income customers. Suburban's estimate that "more than 20% of the residents of its service area could be characterized as low-income" and that low-income customers probably lived in multiple occupancy dwellings or residences with a large number of occupants, is unsupported by record evidence.¹¹ (Suburban Settlement at ¶ 7.2; Ex. 3, at p. 11) There is no evidence to support the claim because Suburban does not track the number of multiple occupancy buildings in its service territory, nor does it track the occupancy of single family homes. (Ex. 3, at p. 11; Tr. 46, 487-88). Mr. Kelly testified that "we certainly don't know the economic characteristics of all those customers," only that there is some "reason to suspect that many of those are low income." (Tr. 69-70).

Mr. Kelly and DRA's witnesses testified that there was another reason for not using winter average usage as the top of the first tier. The parties were concerned that too many tiers would make the rate structure (which already includes zones) more complex. "[I]t was based on a desire for simplicity; that is, to keep the rate structure

¹¹ This unsupported assertion was also used to justify Suburban's special treatment in the realm of service charges.

consistent throughout the company and not have a variety of maybe different rates but not a different rate structure.” (Tr. 11, Kelly) “We wanted to ensure that the differentials between the zones were maintained, we wanted to ensure that there were not an inordinate number of tariff schedules that had to be prepared. So that was the key reason that we made that decision.” (Tr. 16, Olea).

The desire for simplicity should not be used as an excuse to avoid sending conservation signals to customers.¹² As Mr. Kelly recognized, the maximum effect on conservation was more likely to occur under the 3-tiered rates Suburban proposed than under settlement rates. (Tr. 46)

Evidence in the record offers some basis for re-designing Suburban rate blocks and setting the top of the first tier at 10 Ccf. Average winter usage in the Whittier L. Mirada district, using the lowest three months, is 9 Ccf; average winter usage in the San Jose Hills District, using the lowest three months, is 11.76 Ccf. (Suburban-DRA Settlement, Att. 2, p. 2). Mr. Herbert, Suburban’s consultant, proposed a first tier “switch-over point” at 10 Ccf. (Ex. 1 at p. 3)

Further, the evidence shows there is a need to add a third tier in at least one of Suburban’s water districts, if one follows DRA criteria. The parties’ decision to offer only one additional tier was based on a claim that summer usage is not more than twice winter usage. A comparison of the average of the three highest months’ usage in each of the districts (Whittier: 16.3 Ccf; San Jose Hills: 31.7 Ccf)¹³ to the average of the three lowest months’ usage (Whittier: 9 Ccf; San Jose Hills: 11.76), however, shows that at

¹² Nor should the DRA try to second-guess the utility on what risk it is willing to assume in the collection of revenue through volumetric rates. (Tr. 42-43)

¹³ These figures differ somewhat from the figures shown at the top of the page. There were derived by using three months, instead of four months. Either set of figures shows a third tier is justified in the San Jose Hills.

least in the San Jose Hills district, there should be a third tier. (Suburban-DRA Settlement, Att. 2, p. 2). This error should be corrected by the Commission if settlement rates are implemented.

If settlement rates are placed in effect, however, customers will be given no incentive to conserve. The parties have agreed that first tier rates will be reduced by 2% to 2.5%. (Suburban-DRA Settlement at ¶ 4.6) The first tier covers average annual usage. Average use is shown in Suburban's consultant's testimony as follows:

	Average	Mean	Median
Whittier	19 Ccf	19 Ccf	14 Ccf
San Jose Hills	20 Ccf	20 Ccf	15 Ccf

(Ex. 1, at pp. 3-4). Thus most of Suburban's customers will see reduced charges on their bills. While others may see some increase in charges, the differential between rate blocks is only 8% to 14%. As with Park's settlement rates, the conservation price signal to be given customers is very weak.

IV. AN ALTERNATIVE TO SETTLEMENT RATES

CFC offered an alternative approach to designing conservation rates, an approach based on the regulatory principles that rates should be aligned with costs and should be fair and equitable.

A. Setting the First Tier on a Rational Basis.

A study examined by Suburban's witness showed that setting rates with allowances, or "budgets", is more effective at inducing conservation and communicating pricing. (Tr. 59) CFC discovered a study which found that "the additional complexity of customer-specific water budgets were [sic] more than outweighed by the increased customer acceptance of their customized rate structure. Customers prefer that their

water-budget-based rates be based on the characteristics of their site, not an average.” (Ex. 19, at p. 22). CFC recommended the Commission consider this approach to conservation rates.

1. Allowance for Essential Uses

As a first step, CFC proposed that all customers should be allowed access to the amount of water needed to satisfy basic human needs at a reasonable price. This is a principal Cal Water recognized when filing testimony in support of A.06-10-026. A ‘key objective’ of Cal Water’s proposal, Mr. Morse said, was to “[c]onsider the impact on low income customers,” quoting from the Commission’s Water Action Plan. “Cal Water is proposing that the first rate tier be set at a level to include basic water needs.” (Ex. 17, at p. 35:6). Ms. Wodtke explained that conservation rates must take into account the fact that water is one of life’s basic requirements.

When price is used to ration water,¹⁴ as it is with increasing block rates, wealthy customers, who are the least price sensitive, will be able to absorb the higher prices, while poorer households will have to reduce usage. That poses less of a problem with respect to discretionary use of water (swimming pools, lawns, hot tubs), than it does with water use which is deemed essential (drinking, bathing, cooking). If the first tier is set too low, financially disadvantaged customers may have to cut back on essential uses of water. Most policy makers have agreed that some portion of water should be allocated to all members of society, regardless of their ability to pay for it.

(Ex. 19, at pp. 10-11). All parties appear to agree with this principle. (Ex. 9, p. 16; Tr. at 57, Tr. 270, 405-06).

Ms. Wodtke’s research led her to determine that an allowance of 10 to 11 Ccf per month would provide enough water for basic human consumption and sanitary needs of

¹⁴ There seems to have been some confusion about the meaning of the word ‘ration’ as used in her testimony. Ms. Wodtke explained, “I meant it in the terms of allocating a scarce resource among people who need that resource. (Tr. 528)

a family of four. (Ex. 19, at p. 10). Mr. Morse appeared to have accepted this calculation in additional direct testimony offered at hearing. (Tr. 348-49). This water allowance should be incorporated in conservation rates, in order to treat all customers fairly. “If the first tier of rates is set based on an amount of water determined necessary for basic human needs, it will be affordable and, incidentally, a subsidy may not be required from other ratepayers.” (Ex. 19, at p. 11).

CFC recognizes that in setting the top of the first tier at a level deemed sufficient to satisfy basic needs, one must make an estimate of the size of the household. As Mr. Morse pointed out, a family of four is not the norm in California; instead, family size is “roughly about 2.93.” (Tr. 355, 375). On average, therefore, an allowance for a family of four may be too high. On the other hand, some families may have more than four people and if these families do not have the resources to pay higher bills, they may have to cut back on essential uses of water. (Ex. 19, at pp. 10-11). The Irvine Ranch Water District (IRWD) has addressed the latter problem by allowing variances to the base rate when more people are living in the home than presumed by the base rate calculation. (Ex. 19, at Ex. Q, “About IRWD, Residential Rates.”)¹⁵ LADWP has also addressed the problem of large families by making bi-monthly adjustments to the water bill to adjust for family size. (Ex. 19, at Ex. P).

The creation of a first tier allowance has also been used to overcome the problem of overburdening low-income customers residing in multi-family dwellings, a problem which caused DRA and Suburban to deviate from the parameters set in the Cal Water case. The City of San Juan Capistrano has created a water allowance for master

¹⁵ The base rate is the second tier, not the first tier, because Irvine Ranch Water District has a special reduced rate for low volume water users. IRWD also allows variances for special medical needs.

metered multi-residential buildings of 6 Ccf per month, per unit attached to the water meter, then increases charges if usage exceeds that amount. (Ex. 19, at Ex. R).

2. Allowance for Commercial & Industrial Customers.

The creation of a first tier allowance is a method which has also been used by some water districts to overcome the problem of the ‘heterogeneous’ usage patterns of C&I customers, which several witnesses offered as justification for failing to propose increasing block rates for those classes. For example, in the Irvine Water District, rates for C&I customers are tiered based on an allowance calculated on the basis of the customer’s actual usage. Each C&I customer’s actual historical water usage is calculated, which establishes a “base index” (first tier) for that particular customer.

Then,

The monthly water bill is calculated by comparing actual usage with the base index. Consumption at or below the base index is charged at 91 cents per 100 cubic feet (ccf) of water. Consumption that exceeds the base index is charged at incrementally higher rates to encourage efficient water use.

(Ex. 19, at Ex. Q, “Conservation, Commercial & Industrial”). The base index may be changed if expansion or some other factor affects water use, and bill adjustments are made when leaks are fixed, or when necessary to take into account extraordinary events, e.g., flushing and refilling a pool. (*Id.*).

B. Rates Based on Costs

The second principle that guided CFC’s presentation was the need to match prices to costs. “Regulation has generally attempted to use costs as a ‘reasonable’

basis for setting rates, thereby avoiding claims of arbitrary pricing practices. Basing rates on cost also avoids unfair treatment of customers.” (Ex. 19, at p. 12).¹⁶

The settlements do not offer any explanation of the relationship between the proposed rates and the utilities’ costs, nor have the parties offered any description of how costs were taken into account in designing conservation rates. They quickly backed away from any claim that rates match marginal costs. (Tr. 271, 358, 396-97). The only other references to costs were statements that all of the block rates have been designed to be “revenue neutral,” and, as CWA pointed out, the companies are proposing to collect additional fixed costs through quantity rates. (Tr. 478). The parties used judgments instead of cost studies to price rate blocks.

1. Forward-Looking Costs

Costs should be taken into account in designing conservation rates. The rates of the Los Angeles Department of Water and Power (“LADWP”), for example, are designed to recover the cost of water procurement, water quality improvements and water security in the first tier, and the cost of new water supplies (marginal cost) in the second tier. (Ex. 19, at Ex. P, p. 1) “Marginal-cost pricing is one strategy to promote more efficient water use,” per DWR. (Ex. 19, at p. 13). Under marginal cost pricing, the cost of adding additional facilities to serve increased load is charged to the customers creating the demand for such facilities.

CFC’s witness recognized that water utilities have not yet developed marginal cost studies which can be used for pricing, but suggested that Class A water utilities

¹⁶ In an Apple Valley Water District case, the Commission recognized the importance of a cost study: “Without a cost study, we cannot determine with certainty the true cost to serve the gravity irrigation customer, nor any contribution to marginal costs by that customer.” 2005 Cal. PUC LEXIS 533 (Cal. PUC 2005)(Apple Valley)

should be analyzing costs they expect to incur in the future in the Water Management Programs they file with general rate cases. (Ex. 19, at p. 14). Setting tier prices to reflect the cost of current (Tier 2) and future (Tier 3) costs developed in a rate case is rational. Setting tiered rates based on judgments about the probability of low-income people living in multi-family dwellings, or the likelihood of rate shock when GRCs are decided, is less easy to justify.

2. Demand-based Rates.

The Settlement parties' assumption that there are no extraordinary costs of meeting peak demand if summer usage is not more than twice the amount of winter usage, is untenable. DRA's witness confessed unfamiliarity with the concept of peak demand (Tr. 41), which may explain why the settlements do not include seasonal rates. Peak demand has an effect on water utility costs, and should be addressed by seasonal rates. (Tr. 558-59)

Mr. Morse, who has some experience with the electric industry, appeared to recognize that water utilities experience higher costs during the summer. "[W]e do know that there is more consumption in the summer. And we know that -- so that they're going to be using more expensive supplies to meet the summer demand than they would normally to meet the winter demand." (Tr. 399). In order to encourage customers to reduce their peak demand, thereby helping utilities avoid placing higher demands on scarce summer supplies, seasonal rates are necessary.

In the water industry it is increasingly common to observe rates that vary by season; volume charges are higher during the peak season and lower during the off-peak season. These are referred to as *seasonally differentiated rates*, or more simply as *seasonal rates*.

If ... variation in demand is systematic, occurring during a certain period or periods (e.g., sprinkling demand), then the price for service during the peak period(s) should include the cost of capacity that makes consumption at the peak level possible. ... When peak demand occurs during a specific period, then any consumption during that period contributes to the peak and thus to the need for capacity. In other words, any consumption during the peak period is, in part, responsible for the capacity required to satisfy it. Whether a customer's consumption is small or large during that period is of no relevance, since it is the sum of all demands that creates the peak. Therefore, the price of a unit of water during the peak period for all customers should reflect the cost of providing this additional amount of water.

The underpricing of service during the peak period results in over consumption, and, in the long run, will encourage over development of water resources. ...

(Ex. 19, at Ex. M, pp. 5-3, 5-28 to 5-30). As Mr. Hannemann notes in this quoted section, increasing block rates do not address the peak demand situation. A customer's use may be small, but if it occurs during peak periods, the customer is contributing to the higher costs the utility incurs at the time of peak demand and should be charged with that cost.

The parties to the Suburban settlement have undertaken some effort to identify usage patterns by customers at different usage sizes. (Tr. 29, 68; Ex. 15). Further analysis should be undertaken and seasonal rates should be developed.

3. Equity

Finally, to make sure costs are equitably shared by customer classes, CFC suggested that it was time to re-visit cost allocation studies used in rate cases. Under settlement rates, all customer classes (except those in Suburban's territory) will see reductions in their service charges, but only residential customers will be placed on increasing block rates. As a result, the amount of consumption by residential

customers at the high levels is likely to decrease, while C&I customers' use may not change. (Tr. 474).

The Commission's Standard Practice U-7-W requires the allocation of certain fixed charges among meters in relation to the size of the meter, while commodity charges are created by simply dividing revenues not collected through the service charge by the expected annual sales. A new Standard Practice must be developed if different classes of customers (residential vs. C&I) receive water through the same size meter, but are charged different volumetric rates for that water. Once residential customers begin to respond to the price signal sent through increasing block rates, the costs allocated to them should go down. Existing Standard Practice does not recognize that phenomenon.

The Commission should begin measuring the extent to which each class is contributing to the overall cost of serving them, so that one class of customers is not allocated a disproportionate share of overall costs. According to DRA, California law requires municipal utilities to undertake that analysis:

In 1996, the California voters passed the Right to Vote on Taxes Act which has been codified as I believe 66000 or something of the sort. It set a very strict standard -- known as Proposition 218. It sets a very strict standard for municipal utilities. It requires cost of service that is identified in a rate study that should essentially undertake a functional approach which is a very engineering-based approach. ... And it allocates cost to customer classes based on the estimated demand they put on the system using engineering estimates.

(Tr. 300-01).¹⁷ The same rules should apply to investor owned utilities.

¹⁷ Government Code Section 66013 states: (a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed," California courts have recognized that a municipal utility may not discriminate among customer classes. *Hansen v. City of San Buenaventura*, 184 Cal. App. 3d 679 (Cal.

Rational allocation of costs among classes matters. DRA suspects that for each 10 percent increase in bills, consumption will go down by approximately 4 percent. (Tr. 40). If residential customers reduce their usage by 4 percent, and commercial customers do not, residential customers should realize the savings arising from their conservation efforts. Costs allocated to residential customers should be reduced by 4 percent and re-allocated to other customer classes which have not reduced their consumption. If costs of serving residential, commercial and industrial customers are not accurately reflected in allocation factors used to assign costs to each class, the greater conservation efforts of residential customers will inure to the benefit of other classes, which is neither fair nor equitable.

C. An Investigation of Water Rates Should Precede Implementation of Settlement Rates.

A comprehensive look at cost and rate design issues is necessary before any one design of rates is placed in effect. Class-based rates should not be placed in effect until costs have been fairly allocated among customer classes, in a general rate case. Further, the overall effect of any rate increase in the GRC should be taken into account in setting the level of tiered rates, particularly if there is a real possibility of rate shock so that customers will not associate the Commission's conservation efforts with exorbitantly high rates. Further, the Commission needs to resolve some policy issues, like whether Tier 1 should represent a subsistence level of water or average water use, at what level of usage additional tiers should be created, and what price difference between rate tiers should be required, to accomplish the statewide conservation objectives." (Ex. 19, at p. 20).

Ct. App. 1985).

In responding to the Judge's question as to whether it is more important for the Commission to decide a very few conservation rate designs for a limited number of companies correctly, or to attempt to get all Class A utilities with conservation rate designs in place, Ms. Wodtke stated:

I think it's a lot more important to put in effect rates which will actually encourage conservation than to put in rates which may not.... So my recommendation would be to wait and make sure that the conservation rates are designed to achieve their intended effect.

(Tr. 563).

V. WATER REVENUE ADJUSTMENT MECHANISM (WRAM)

The concept of a water revenue adjustment mechanism first appeared in the water utility context when California-American Water Company ("Cal-Am") asked to increase rates in its Monterey district in 1996. *In the Matter of the Application of California-American Water Company for an order authorizing it to increase its rates for water service in its Monterey Division*, Application No. 96-03-008 (1996). Cal-Am not only proposed an "alternative" rate design for residential customers "to better encourage conservation efforts", but also "commit[ed] to perform various studies during the GRC cycle to gauge the effectiveness of the experiment and to investigate the implementation of an alternative rate structure for commercial customers and for residential customers in multi-unit buildings." Decision No. 96-12-005; 1996 Cal. PUC LEXIS 1066, *19-20; 69 CPUC2d 398 (Dec. 9, 1996). A WRAM was proposed for the same GRC cycle "[b]ecause the experimental rate design would increase the variability of Cal-Am's revenues.

WRAM would track the variation in projected revenue incurred under the experiment, which includes the reduced service charges mentioned above, a lifeline residential rate block, and a rate surcharge for high

consumption. A WRAM account balance would accrue interest at the 90-day commercial paper rate, and Cal-Am would file an advice letter for amortization of such balance at any time that it exceeds 5% of gross annual revenues and is anticipated to exceed 5% of gross annual revenues within the following six months for the Monterey District.

Id. at *20-21. The Commission approved the settlement of which the WRAM was a part.

It is not clear that a WRAM is necessary for any of the water utilities whose rates are addressed by the settlements under investigation. As DRA pointed out, decoupling is necessary only if the utility actually has an incentive to sell more water because selling more means getting more revenue. If however, selling more water means incurring higher costs, there is no need to decouple revenue from sales. (Tr. 304) No evidence was presented in this case to demonstrate which of these situations exist.

Further, each settlement proposes a very conventional rate design that can hardly be deemed 'experimental' at this time, as the California-American rate proposal was in 1996. According to the Commission's Water Action Plan, "[a]pproximately half the California water ratepayers in 2003 had increasing block rates. (Water Action Plan at 8) And the specific rates proposed in the settlements are unlikely to cause any measurable changes in customer consumption patterns. Less than one-fourth of the customers in several of Cal Water's districts will receive any increase in rates. (Ex. 19, at p. 17 & Ex. O). Only 35 percent of Park's customers will see increased rates. (Tr. 188). And the amount of increase to be charged under settlement rates is very small when compared to the percentage increases between rate blocks adopted by municipal utilities. (Ex. 19, at p. 19; Tr. 531-32).

A. Suburban's WRAM

Suburban states it has modeled its WRAM on the WRAM in effect in Cal Am's Monterey District. (Ex. 3, at p. 8:18). "The proposed WRAM merely tracks the difference between revenues collected based on the conservation rate design and what revenues would have been collected for the same amount of water sold under the traditional Commission rate design," and "does not account for the loss in revenue due to reduced sales that result from a conservation rate design." (Ex. 3, at p. 8, "A9"). "Suburban's WRAM reprices its actual sales at the rate authorized by the Commission in the rate case." (Tr. 299, 486). "[I]t just puts the utility back in the same position it would have been with uniform rates exactly. (TR. 85-86). CFC has withdrawn its objection to this type of WRAM. (Tr. 486).

B. The Cal Water and Park Water WRAMs

Cal Water and Park Water proposed a different kind of WRAM than previously authorized by the Commission. The Commission stated that the Cal Water WRAM, first proposed in A.05-08-006, "would virtually guarantee that the utility would always receive the GRC-estimated sales revenues for the districts to which the WRAM would apply." D.06-08-011 at 14. The WRAM proposed by Park Water is identical. (Tr. 142, 431).

Mr. Jackson explained his company's dissatisfaction with the WRAM proposed by Suburban and in use by Cal-Am: "The Monterey WRAM does not decouple sales from earnings. The Monterey WRAM simply makes -- the Monterey WRAM simply tracks the differences in the rate designs. It does not make the utility whole for loss in

revenue due to conservation resulting in decreased usage.” (Tr. 133-34). Mr. Jackson did not approach Cal-Am to request information about whether Cal-Am was fully compensated by its Monterey-style WRAM; he based his opinion solely on “how the mechanism works.” (Tr. 139).

The WRAM Cal Water and Park Water propose tracks the difference between the revenue actually earned from volumetric rates compared to the revenue each was authorized to earn from volumetric rates. (Cal Water Settlement at ¶¶ VII.2; Park Water Settlement at ¶¶ 7.2; Tr. 144). The WRAM is to be used in conjunction with a Modified Cost Balancing account (“MCBA”). (Cal Water Settlement at ¶¶ VI.2; Park Water Settlement at ¶¶ 7.2). The MCBA tracks, in separate accounts, the difference between the expense levels for purchased power, purchased water and pump taxes used for fixing rates, and the actual costs of purchased power and water and pump taxes. (Tr. 155-56). The Settlement proposes that the balances in the WRAM and MCBA will offset each other. (Cal Water Settlement at ¶¶ VII.3; Park Water Settlement at ¶¶ 9.2). An advice letter will be filed proposing amortization of the net balance of the two accounts through a surcharge or surcredit, to be added to the customer bill when the combined balances exceed 2 percent of Park Water’s revenue requirement. (Park Water Settlement at ¶¶ 9.2.d; Tr. 156-57). In Cal Water’s case, the surcharge or surcredit is added to the customer bill when the combined balances in any district exceeds 2.5% of any district’s total recorded revenue requirement for the prior calendar year. (Cal Water Settlement at ¶¶ IX.3.d). A detailed calculation of the combination of the two accounts is provided in the Cal Water Settlement, and was explained at some length by a DRA

witness. (Tr. 434). The different levels of caps on the account balances was not explained.

It was the settling parties' intent that the combined use of MCBA's and WRAMS would "ensure that the utility and ratepayers are proportionally affected by the impact of conservation" (Cal Water Settlement at IX.2; Park Water Settlement at ¶ 9.1; Tr. 297-98). But the parties failed to take into account the fact that conservation is not the only factor affecting the balances in these accounts and there is not a one-to-one relationship between the revenues lost to the utility and production cost savings.

Q. [D]o you believe there may be some correlation between decreased consumption, decreased purchased power, pump tax, and purchased water costs and decreased revenues? Are those three things likely to occur together?

A. [I]t's not that simple. If you had a static model where purchased power prices, for example, were always the same, then I might respond to your question yes. But that's not the case.

(Tr. 165, Jackson). The utility has some control over both the amount of conservation that takes place and the amount of production savings achieved. The combination of the two accounts discourages a utility from reducing its purchased power and purchased water costs because any savings in production costs it achieves will reduce the amount of lost revenues it is able to collect from customers.

Not only does the WRAM guarantee recovery of revenues authorized in a rate case, it also rewards customer classes which don't conserve, with benefits achieved by classes which do conserve. The WRAM/MCBA accounts will track the difference between authorized and collected revenues for all customer classes, and any associated production cost savings realized as a result of that conservation. The increasing block rate design, however, will be implemented only for residential

customers; any savings achieved as a result of their responsive conservation should inure to their benefit. (Tr. 145). The WRAM does not separate under- or overcollections by customer class, though Cal Water appears to recognize that revenues could be segregated by class. (Tr. 449) The cross-subsidy facilitated by the WRAM stands in stark contrast to Cal Water's low-income customer subsidy, which collects subsidies for low-income customers only from the residential class. (Tr. 406).

DRA's witness also expressed some concern about the effect of adding a surcharge to a conservation rate: "[W]e were worried about compounding the price signal. That's one problem that actually happens when you amortize." (Tr. 307).¹⁸

VI. BURDEN OF PROOF

The rules concerning settling parties' burden of proving the rate design in their settlement is reasonable are firmly established in Commission precedent. DRA and the water utilities have not met their burden of proving that the conservation rates will achieve their intended purpose.

The general rule applied to an increase in rates proposed by a utility is that "The utility bears the burden of proving that its proposed rate increase is justified and must include in the proposed application and supporting testimony, all information and analysis necessary to meet this burden." (D.07-05-062, Appendix A, "*Rate Case Plan and Minimum Data Requirements for Class A Water Utilities*," Paragraph IV.A.3.). This same rule applies to a proposal to change the utility's rate structure. D. 82414, "*Phase*

¹⁸ While cautioning against using municipal utilities as examples, she mentioned that positive balances are sometimes kept by LADWP and Huntington Beach to use as offsets to potential rate increases. (Tr. 308). She thought it might be appropriate to use balances in WRAM/MCBA accounts to fund conservation programs, rather than refunding the money as a surcredit. It is unlikely that customers would agree to donate money owed them to the utility. An argument could be made that such a practice violates the 'taking' clause of the U.S. and California Constitutions.

II Hearings Regarding Reallocation of So. Cal Gas Co.'s Gas Supply,” 1974 Cal. PUC LEXIS 865, *43 (Cal. PUC 1974).

The fact that some parties have entered into a settlement of disputed issues does not change the utility’s burden of proof. A utility continues to have the “sole obligation to provide a convincing and sufficient showing to meet the burden of proof.”

Application of San Diego Gas & Elec., 2005 Cal. PUC LEXIS 522, *8-9 (2005).

In judging the reasonableness of a proposed settlement, we have sometimes inclined to find reasonable a settlement that has the unanimous support of all active parties in the proceeding. In contrast, a contested settlement is not entitled to any greater weight or deference merely by virtue of its label as a settlement; it is merely the joint position of the sponsoring parties, and its reasonableness must be thoroughly demonstrated by the record.

Application of Pacific Gas & Electric Co., D.07-03-044, 2007 Cal. PUC LEXIS 173, *17, *quoting* D.02-01-041, *mimeo.*, p. 13.

The burden of proving the stipulation or settlement is fair is on the proponents. *Application of Southern California Gas*, D.01-02-075, 2001 Cal. PUC LEXIS 143, *14. The burden is not on intervenors to demonstrate that the utility’s request is unreasonable. *Application of Southern California Edison*, D.04-07-022, 2004 Cal. PUC LEXIS 325, *17; 235 P.U.R.4th 1. And the Commission has an independent duty “to determine whether the settlement generally balances the various interests at stake as well as to assure that each element is consistent with our policy objectives and the law.” 2001 Cal. PUC LEXIS 143, *13-14.

Parties to the settlement may chafe at what they perceive as intrusion on bargained-for deals and may believe that this Commission should simply take their word that the settlements serve the interest of the public in addition to the interests of the settling parties. However, settlements brought to this Commission for review are not simply the resolution of private disputes, such as those that may be taken to a civil court. The

public interest and interests of ratepayers must also be taken into account, and the Commission's duty is to protect those interests.

Id. at *14.

The Commission must intervene in this case to require that Settlement rates be based on judgments about what will best serve the public interest, rather than on formulaic application of unexplained averages. Customers should also be protected from unreasonable charges effectuated through the combined WRAM/MCBA balancing accounts.

VII. CUSTOMER NOTICES AND DATA COLLECTION

A. Customer Rate Notices

The Commission determined in the Water Action Plan that “[e]ducation is a vital component of conservation efforts. For decades, energy ratepayers have funded extensive education efforts by energy utilities, which have been critical in California’s energy efficiency efforts. A similar approach is needed for water conservation.”

The parties to the settlement have agreed that settlement rates should not be placed in effect until “90 days following a Commission decision adopting the proposed settlement.” One of the reasons for the 90-day delay is to provide customers with advance notice that their rates are going to change and to give them information about how to adjust their usage so their bills will not increase. (Tr. 536)

1. Customer Notice of a Rate Decrease Should Be Avoided

It is not clear, exactly, what purpose will be served by an informational effort if settlement rates, which reduce customers bills, are implemented. Further, spending money to inform customers about settlement rates will be expensive. Mr. Jackson

pegged the cost of customer notices at around \$1,000. (Tr. 227). Particularly in the case of Cal Water, which plans to turn around after this case, and increase rates at the conclusion of pending rate cases, customer notification costs will be excessive, since Cal Water will have to explain why the first set of conservation rates need to be changed. Also, in the case of Suburban, two sets of charges for customer notices will be recorded in conservation memorandum accounts, the amount spent educating residential customers about the Settlements' reduced rates, and the amount spent educating commercial and industrial customers about conservation rates set in the upcoming rate case. (Ex. 19, at p. 7). Perhaps conservation information should be provided, at this time, only to customers with high water usage.

CFC has participated in consumer groups' efforts to obtain agreement by the utilities to the basic customer notice to be provided customers, and methods for delivery of that information, when rates are placed in effect. The Suburban settlement, with some modifications, should be used as a pattern for Park Water and Cal Water customer notification.

2. Customers Should Be Given Information About How Their Bills will Change and What to Do About It.

Under the Settlement with Suburban, customers will receive "notices which include written information on conservation rates explaining why their rates are being changed, what the impact will be on their monthly bill, what the change will be on the average monthly bill, and the effective date." (Section 3.1.1). The notice will also include a "comparison of the current rate structure and the new conservation rate

structure.” (Section 3.1.2). The purpose of this requirement is to alert customers to the changes that will be taking place in the amount they are billed for water.

The notice sent to customers should also include some instruction on how they can reduce their water bill, a requirement not included in the Suburban settlement. The fact sheet provided by the Environmental Protection Agency (Ex. 19, at Ex. I) is a good example of the kind of information customers need.

A secondary issue is how to deliver the information. The parties to the Suburban Settlement agreed that the information would be provided in Spanish, a language which is spoken by a significant percentage of Suburban customers, upon request. (Section 3.1.3). Key information in the notice will be set in large print for the visually impaired. (Section 3.1.4) The information will be sent as a bill stuffer, with a short message on the bill itself alerting the customer that important information about their rates has been sent in the same envelope. (Section 3.3.1)

Whether customers actually look at information included with their bills is an open question. Another potential obstacle to successful delivery of important conservation information is the fact that information in Spanish must be requested, rather than provided as a bill stuffer. On the other hand, Suburban will make an additional effort to reach the Spanish-speaking population by distributing targeted flyers throughout the Spanish-speaking communities in its service territories which explain conservation rates and the LIRA program, at a reasonable cost. The parties to the settlement have also agreed that advertisements (as distinguished from official notices) will be placed in newspapers which reach Suburban’s customers, explaining conservation rates.

The customer notices will include contact information for Suburban, including a TTY number and Suburban's website, where "other materials" concerning conservation and LIRA rates will be posted. The website can be a useful tool for customers with computer access. Many companies have provided conservation tips and links to conservation information on their websites.

A key element missing from the Suburban settlement is a promise that Suburban will make personnel available to answer customers' questions about the new conservation rate structure. The Settlement does provide a means whereby customers can ask for information, but offers no promise of interactive conversation, which would be a useful tool for encouraging conservation efforts. For example, by looking at the customer's history, a customer service representative may be able to identify greater than normal usage which might indicate a water leak, or may talk to the customer about where to find aerators and shower heads that will help the customer reduce water use.

It is assumed that the customer notices required by the Suburban Settlement will be provided only to residential customers, since they are the only class affected by the new rate design. It will be important to monitor the amount spent for advertising, particularly any amount spent on promotional advertising.

B. Data Collection

Data collection is a very important part of the overall conservation effort. First, as demonstrated in connection with the DRA-Suburban Settlement, the lack of a complete data base upon which to base the design of rates can distort the ratemaking process. The lack of data distinguishing customer classes is being used by Cal Water, as well, as an excuse not to design conservation rates for them. (Tr. 387-88).

Second, additional data is needed by the Commission to develop conservation programs. Customers with substantially similar usage patterns should be identified, e.g., hospitals, motels, restaurants, so that conservation programs may be tailored to meet their particular needs.

Third, data must be collected to discover whether conservation rates which are implemented are having their intended effect. The settlement between Park Water and consumer groups identifies data collection needed to evaluate the effect of conservation rates, specifically:

- The annual number of customers in each customer class
- The monthly number of residential customers.
- The monthly customer usage in billing units by Tier 1 and Tier 2 separated by meter size and by customer class (with LIRA customers broken out).
- The monthly customer usage for current month of the current year vs. prior year, using average customer profiles at different usage levels (with a separate profile for LIRA customers).
- Weather normalized monthly usage data (available only during GRC proceedings).

The data Park provides will allow the observation of changes in average usage per customer for each customer class, from month to month over the course of the year and will show, for each month, a comparison to the average usage per customer, for the same month in the previous year.

The other utilities should be required to provide the same information.

CONCLUSION

The Consumer Federation of California respectfully requests the Commission to delay implementation of conservation rates until they can be implemented fairly and in a manner which will provide customers with reasonable price signals. Costs should be fairly allocated among customer classes so that each class realizes the benefits of its

own conservation efforts. All classes of customers should participate in the State's conservation effort, not just residential customers. The increasing block rates which are placed in effect should be reasonably aligned with costs so that customers who contribute most to increasing demands for water learn to appreciate the demands they are placing on the water system, and a reasonable allowance of water for all Californians should be included in any rate structure which is implemented.

Dated: August 27, 2007

Respectfully submitted,

CONSUMER FEDERATION OF CALIFORNIA

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<i>Hansen v. City of San Buenaventura</i> , 184 Cal. App. 3d 679 (Cal. Ct. App. 1985).	26
(D.07-05-062, Appendix A, “Rate Case Plan and Minimum Data Requirements for Class A Water Utilities,” Paragraph IV.A.3.).	33
<i>Application of Pacific Gas & Electric Co.</i> , D.07-03-044, 2007 Cal. PUC LEXIS 173, *17, quoting D.02-01-041, <i>mimeo.</i> , p. 13.	34
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<i>D.06-08-017 (Suburban)</i>	8
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<i>Application of Southern California Gas</i> , D.01-02-075, 2001 Cal. PUC LEXIS 143, *14.	33
D. 82414, “Phase II Hearings Regarding Reallocation of So. Cal Gas Co.’s Gas Supply,” 1974 Cal. PUC LEXIS 865, *43 (Cal. PUC 1974).	33

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates	Application 06-10-026 (Filed October 23, 2006)
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)
Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan	Application 07-03-019 (Filed March 19, 2007)

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2007, I served by e-mail all parties on the service lists for I.07-01-022, A.06-09-006 A.06-10-026, A.06-11-009, A.06-11-010, & A.07-03-019 for which an email address was known, true copies of the original of the following document which is attached hereto:

**OPENING BRIEF OF
THE CONSUMER FEDERATION OF CALIFORNIA**

The names and e-mail addresses of parties served are shown on an attachment.

The aforementioned document was served on Michael Whitehead, San Gabriel Valley Water Company, PO BOX 6010, El Monte, CA 91734, by causing the Notice, enclosed

in an envelope addressed to him and with postage prepaid, to be deposited in the U.S. Mail.

Dated: August 27, 2007

Respectfully submitted,

CONSUMER FEDERATION OF CALIFORNIA

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